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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216536 **DATE:** March 27, 1985
MATTER OF: Singleton Contracting Corp.

DIGEST:

Agency may properly reject a bid based on a finding that the bidder's individual sureties on a bid bond are unacceptable because they failed to disclose outstanding obligations on their Affidavits of Individual Surety.

Singleton Contracting Corp. protests the rejection of its bid under invitation for bids (IFB) No. N62467-83-B-4210, issued by the Naval Facilities Engineering Command. The solicitation, a 100 percent small business set aside, covered replacement of a roof at the Marine Corps Air Station in Beaufort, South Carolina.

Before the August 14, 1984 bid opening, Singleton lowered its bid from \$500,000 to \$136,530 by timely telegraphic modification. When the low bidder was found nonresponsive because it had qualified its bid, Singleton, as second-low, appeared to be next in line for award. The Navy, however, rejected Singleton's bid on grounds that the bid bond submitted with it was deficient. Singleton challenges this determination and the Navy's subsequent award of a \$138,641 contract to Marshall Roofing Company.

We deny the protest.

Under the IFB, bidders were required to submit bid bonds equal to 20 percent of their bid prices. Because Singleton was bonded by individual rather than corporate sureties, a completed Affidavit of Individual Surety (Standard Form 28) for each of its two individual sureties also was required.

Item 10 of the Affidavit required the individual sureties to disclose all other bonds on which they were listed as sureties at the time they executed the bid bond for Singleton. The sureties disclosed that each also was serving as a surety on a bid bond in the amount of \$52,400, issued in connection with IFB No. N62467-83-B-2467. After

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bid opening, the contracting officer discovered that each of Singleton's individual sureties had pledged the same assets against payment and performance bonds totaling \$133,678.50 on another contract, N62467-83-C-3016, being administered by the same procuring activity, i.e., the Southern Division of the Naval Facilities Engineering Command. In addition, it appeared that the sureties had failed to list outstanding obligations in connection with still another procurement.^{1/}

The contracting officer, by letter dated September 20, 1984, advised Singleton that its bid had been rejected as "nonresponsive," based on his determination that the individual sureties had "falsifying" statements on their Affidavits of Individual Surety.

Singleton contends that its sureties did not disclose the payment and performance bonds described above because the contract that they secured had been fully completed, accepted, and paid for by the Navy more than 2 months before bid opening. Singleton also contends that the agency should have requested the sureties to furnish additional information, as provided for in item No. 4(b) on the reverse side of the bid bond, which states that "sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the government may require."

We have held that a contracting agency may consider the failure of an individual surety to disclose outstanding bond obligations as a factor in determining the responsibility of the bidder. Dan's Janitorial Service, Inc., 61 Comp. Gen. at 594 (1982), 82-2 CPD ¶ 217 at 3. A surety must disclose all other bond obligations under item 10 of the Affidavit, regardless of the actual risk of liability

^{1/} Shortly after submission of the bid in this case, Singleton responded to IFB No. N62467-84-B-0128, covering miscellaneous repairs at the Naval Reserve Center, Gadsden, Alabama. The Navy rejected that bid, which was secured by a bid bond with the same individual sureties, because the sureties failed to disclose the bid bond involved here. See B-216750, closed without action January 17, 1985.

on those obligations, to enable the contracting officer to make an informed determination concerning the surety's financial soundness. Id. Since Item 10 of the Affidavit provides space for the surety to list "all other bonds on which [he is] surety," we believe that the duty of the individual surety to disclose all such obligations, without exception, is clear.

Here, the Navy advises us that the contract secured by the undisclosed payment and performance bonds contained a 1-year warranty which runs from June 1984 to June 1985. As indicated on the Performance Bond (Standard Form 25), the surety remains obligated during the life of any guarantee required under the contract. Therefore, the performance bond was an outstanding obligation when Singleton's sureties executed the bid bond in this case, and should have been disclosed.

The Navy also advises us that it did not make final payment on the contract secured by the undisclosed payment and performance bonds until October 3, 1984. Although Singleton contends that the Navy made final payment in June 1984, the only evidence on this issue is the conflicting statements of Singleton and the Navy. Singleton therefore has not met its burden of affirmatively proving its case. See Daniels Manufacturing Corp., B-215985, Nov. 2, 1984, 84-2 CPD ¶ 490. Moreover, the Payment Bond (Standard Form 25-A) states that the surety remains obligated under that bond until the contractor makes payment to all persons furnishing labor and/or materials under the contract. Since the Navy had not made final payment on this other contract at the time Singleton submitted the bid bond in question, we believe it was reasonable for the contracting officer to assume that the payment bond also was an outstanding obligation of the individual sureties. See also Federal Acquisition Regulation, 48 C.F.R. §§ 53.301-25 and - 25A (1984) (Standard Forms 25 and 25A).

Finally, the agency, in its report to this Office, concedes that Singleton's bid should not have been rejected as nonresponsive. However, the Navy argues that a non-responsibility determination was appropriate, based upon our decision in Dan's Janitorial Service, Inc. Moreover,

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since a nonresponsibility determination based on unacceptability of an individual surety need not be referred to the Small Business Administration under our decision in Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581, the Navy contends that the distinction between nonresponsiveness and nonresponsibility has no bearing on the merits of this protest. We agree.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel